

**CALIFORNIA COMMISSION ON DISABILITY ACCESS
ACCESSIBILITY ENHANCEMENT COMMITTEE
MEETING MINUTES**

December 20, 2011

1. CALL TO ORDER

Chair Navarro called the meeting to order at 1:01 p.m. at the Department of Rehabilitation, 721 Capitol Mall, Room 242, Sacramento, California 95814.

ROLL CALL

Staff Member Jemmott called the roll.

Commissioners Present: Lillibeth Navarro, Chair (Teleconference)
Rocky Burks

Commission Staff Present: James V. Vitale, Executive Director
Angela Jemmott, CCDA Program Analyst
Lavonia Wade, CCDA Office Technician

Commissioners Absent: Mark Martinez

Staff Member Jemmott stated that a quorum was present.

2. APPROVAL OF MEETING MINUTES (JUNE 2010)

Chair Navarro did not receive a copy of the June 2010 minutes. Executive Director Vitale pointed out there were items of public comment that raise questions that are issues of concern. The approval of the June 2010 minutes will be postponed until the next meeting.

3. COMMENTS FROM THE PUBLIC ON ISSUES NOT ON THIS AGENDA

There were no comments from the public.

4. GENERAL BUSINESS ITEMS

a. Review of Accessibility Enhancement Committee's Mission

Chair Navarro stated the specific charge of the Committee is set forth in various sections of the Government Code Section 8299.05a.

The Legislature had asked the California Commission on Disability Access (CCDA) to undertake five charges from Senate Bill 1608, and the CCDA delegated those charges to this Committee.

Section 8299.05a reads:

The commission shall study and make reports to the Legislature on the following:

**CALIFORNIA COMMISSION ON DISABILITY ACCESS
ACCESSIBILITY ENHANCEMENT COMMITTEE
DECEMBER 20, 2011 MEETING MINUTES**

(1) Issues regarding compliance with state laws and regulations that are raised by either persons with disabilities or businesses, and any recommendations that would promote compliance. This study and report shall be completed and delivered to the Legislature no later than January 1, 2011.

Section 8299.05b (1) reads:

The commission shall act as an information center on the status of compliance in California with state laws and regulations providing persons with disabilities full and equal access to public facilities. To this end, it shall publish a biennial report, which may be combined with the biennial report required in odd-numbered years pursuant to subdivision (e), on the state of disability access compliance by both the public and private sector. The report shall be written in general terms and shall not identify any particular violators.

Section 8299.05b (2) reads:

The commission shall, to the extent feasible, coordinate with other state agencies and local building departments to ensure that information provided to the public on disability access requirements is uniform and complete.

Section 8299.05c reads:

The commission may recommend, develop, prepare, or coordinate materials, projects, or other activities, as appropriate, relating to any subject within its jurisdiction.

Section 8299.05d reads:

The commission shall provide, within its resources, technical information regarding any of the following:

(1) Preventing or minimizing problems of compliance by California businesses by engaging in educational outreach efforts and by preparing and hosting on its Internet Web site a Guide to Compliance with State Laws and Regulations Regarding Disability Access Requirements.

(2) Recommending programs to enable persons with disabilities to obtain full and equal access to public facilities.

Chair Navarro asked if there were any comments to the Committee's Mission Statement and asked for clarification of the roles of each of the other Committees under this Commission. They are as follows:

- Checklist for Access Compliance Committee – to pull together a checklist on general applications of accessibility requirements.
- California Access Specialists (CAsp) & Education Committee – to determine what educational elements may or may not exist in the State of California to achieve accessibility compliance.
- Civil Enforcement Committee – to survey the courts to assess the volume of suits that are being filed in various state and county courts as well as the federal courts in California, making use of volunteers from some of the law schools in the state.

**CALIFORNIA COMMISSION ON DISABILITY ACCESS
ACCESSIBILITY ENHANCEMENT COMMITTEE
DECEMBER 20, 2011 MEETING MINUTES**

- Executive Committee – to act on behalf of the entire Commission in the absence of the Commission.

Chair Navarro stated the mandate of this Committee is as important as the mandate of the entire Commission because its focus is accessibility enhancement. The first task for this Committee to complete is a statewide survey of all public ADA transition plans. Then the Committee will complete a statewide survey of private and nonprofit organizations and law firms that monitor ADA litigation and implementation.

Commissioner Burks suggested publishing a condensed mission statement, tying in elements from all sections.

Chair Navarro agreed. She then brought up the point that, since the ADA has passed, it is a federal law for local government to have transition plans in place. She questioned how many cities and counties actually have transition plans.

Commissioner Burks stated California has 58 counties and approximately 2,200 individual jurisdictions. A survey of how many entities have done their transition plans would require drafting a letter to every city and county in the State of California. This would be immensely labor-intensive. He questioned whether the transition plan is the principal document of corrective action.

Executive Director Vitale recommended establishing a baseline. He suggested an inquiry sheet be sent to each of the city and county municipal jurisdictions throughout the state, asking basic questions, such as whether they have ADA coordinators, whether they have updated transition plans, and what efforts they have made to address the issues contained in the plan. The responses would allow the Committee to map the areas in the state, north and south, in which this has or hasn't been done.

Executive Director Vitale continued by saying that the Internet would supply contact names for all cities and counties in California. He recommended giving a response deadline of less than forty-five days, to enable this Committee to promptly gauge the significance of the various government agencies' adherence to ADA requirements.

Executive Director Vitale informed the Commissioners that Commission Chair Johnson has requested a work plan from each of the Committees, which identifies and prioritizes the issues to be resolved and details future hearings; this will allow the Committee to send a schedule to the Legislature to convey the size of the issue in question. This effort is long overdue; the Committee will minimize the amount of time, staff, and resources necessary, but anticipates cooperation from many statewide stakeholder groups once the message has been delivered to the public.

Commissioner Burks suggested, before sending the survey to the cities and counties, first contacting the League of California Cities (LCC) and the California State Association of Counties (CSAC) to ascertain if they have an established database that identifies these areas. These are the official lobbying groups or associations for the entities that would be surveyed as to their transition plans and ADA coordinators.

Executive Director Vitale agreed with narrowing down the number of contacts to facilitate properly channeling information in a more cost-effective, less labor-intensive

**CALIFORNIA COMMISSION ON DISABILITY ACCESS
ACCESSIBILITY ENHANCEMENT COMMITTEE
DECEMBER 20, 2011 MEETING MINUTES**

manner. He informed the Committee that he has been approached by some other stakeholder groups that are also concerned about this issue and that have indicated a willingness to provide labor and monetary support, such as the Lawyers Against Lawsuit Abuse, the California Restaurant Association, and several major construction industry groups. Per the Charter, Executive Director Vitale is allowed to secure grants, funds, and other support from any and all outside agencies to further support the current budget.

Commissioner Burks said he would also like to consider the State of California. Additionally, there have been public requests as to what kinds of state compliance efforts are actually being achieved. Californians for Disability Rights (CDR) has asked why the State of California does not have ADA coordinators; further, there is no statewide ADA coordinator, per se.

Commissioner Burks went on to ask how the Committee will utilize the survey information. The purpose of enhancement is to identify the potentially major problem of jurisdictions, who are themselves noncompliant and unable to enforce, having the responsibility to enforce compliance.

Chair Navarro stated the survey could be used to access and describe the post-ADA reality, as in what compliance efforts have been pursued. The survey would pinpoint which cities, counties, and state departments have transition plans and corrective actions, and would expose any gaps and areas where accessibility enhancement is necessary.

Commissioner Burks drew the Committee's attention to a program out of the United States Department of Justice (USDOJ) called Project Civic Access. He described it as a formal, investigative arm of the USDOJ that achieves compliance efforts by negotiating settlements with entities that either do not have transition plans, or have outdated plans they are failing to implement. He stated his concern over the possibility that individuals may not be responsive to the survey. If they do not have a transition plan and intentionally fail to correct this, they are in violation of federal law; since every jurisdiction in the State of California, including the State of California, receives federal funds, they are all supposed to have transition plans. The returned surveys should, therefore, indicate that they all have transition plans. Commissioner Burks then emphasized the potentially more important issue of who the ADA coordinator is in each jurisdiction.

Chair Navarro brought out the fact that a letter regarding transition plans would serve a dual purpose: it will also act as an introductory letter for the Commission and invite each jurisdiction to be a partner.

Commissioner Burks agreed and recommended going through the governor's office, the LCC, and the CSAC. He reminded the Committee to be sensitive to the Bagley-Keene Act of 1967 by not making decisions outside of the public purview, and requested that Chair Navarro speak with Commission Chair Johnson concerning her thoughts about moving this information directly through the State of California.

Chair Navarro asked if there was a pamphlet of introduction that could be sent with the letter. Executive Director Vitale answered that there are introductory pieces that, when put together, can open with a statement that details the intent of the Commission in

**CALIFORNIA COMMISSION ON DISABILITY ACCESS
ACCESSIBILITY ENHANCEMENT COMMITTEE
DECEMBER 20, 2011 MEETING MINUTES**

gathering information on current accessibility compliance to present to the Legislature. He went on to state it is an ideal time to reach not only the general public, but every division of government within the state – city, county, and state itself – acknowledging the existence of the Commission.

Executive Director Vitale volunteered to draft a letter of query to Commission Chair Johnson indicating these issues of concern. He stated the letter could be sent without a need to vet it, which would expedite the process so that by the February 2012 meeting, theoretically, the Committee could enter into discussions based upon the responses to those letters. Executive Director Vitale was confident of a significant response and of participation in these Committee meetings by drawing this to the public's attention.

Chair Navarro agreed, and then brought the discussion back to the issue of writing a more focused, succinct mission statement for the Accessibility Enhancement Committee.

Commissioner Burks stated the mission of the Committee is to improve accessibility compliance in the State of California. He then suggested subcategories as to logistics that could be defined as other Committee members are added to the Committee.

Commissioner Burks summed up his impression of the steps this Committee will put into place based upon the Committee's discussion today:

- Executive Director Vitale will inform Commission Chair Johnson that, based upon discussion at this point, the Committee would like to begin the process of contacting three elements of state and local government to achieve accessibility compliance through the Committee's enhancement efforts.
- The Committee will send communication directly to the Governor's Office, informing him that his Cabinet Secretaries will be contacted and are expected to respond, and that the Governor's support in ensuring that those responses are sent in a timely fashion would be appreciated. The Committee will request the transition plans for every department, as well as contact information, job descriptions, and duty statements from the appointed ADA coordinators. Executive Director Vitale suggested the Human Resources Department might best answer whether they have, in fact, created any statewide duty statements; he stated he would ask the Committee's HR contact person, who is available under the Memorandum of Understanding (MOU).
- The Committee will go to the Executive Directors of the LCC and CSAC and elicit their support in identifying whether or not they have a database of their own organizational studies; if they do, the Committee will request that they share who has ADA coordinators and who has achieved transition plans.

Commissioner Burks concluded in stating, by implementing the above, the Committee can determine what kind of information it can bring to the full CCDA as to what the reality is. That is what the Accessibility Enhancement Committee is about.

Chair Navarro asked if there is an instrumentality in the private and business sector, such as Chambers of Commerce, that looks specifically at ADA compliance.

**CALIFORNIA COMMISSION ON DISABILITY ACCESS
ACCESSIBILITY ENHANCEMENT COMMITTEE
DECEMBER 20, 2011 MEETING MINUTES**

Commissioner Burks said that the CASp & Education Committee asked the same question. Members of the public who attended the meeting asked similar questions about the continuing education required of their professional members. The potential costs associated with such a requirement could increase underground, non-compliant construction activities that might drive legitimate entities out of business, something that is already happening despite it being against state law.

Executive Director Vitale added that there are approximately 300,000 contractors in California, including (1) engineering contractors, (2) general contractors, and (3) licensees, which are individual subcontractors. Due to the volume of complaints that they receive on a daily basis, they selectively go out and set up stings. However, the volume of complaints far exceeds their ability in any given year to handle those complaints. In answer to Chair Navarro's question about the Chambers of Commerce, he stated the Committee has two Commission Members – Mark Martinez and Richard Luehrs – who both represent large Chambers of Commerce organizations. The Committees can ask these representatives for their recommendation on how to move forward into the Chamber of Commerce areas and get responses from them.

Chair Navarro brought the Committee's attention back to the mission statement.

Commissioner Burks recommended a simple, straightforward comment such as, "The Accessibility Enhancement Committee's mission is" – followed by "through evaluation of the present state of compliance with community outreach and education." This would be brief and make it easily understood that the Committee is doing research and using that research to reach the public and to educate them as to what is necessary to enhance accessibility.

Commissioner Burks went on to recommend that Chair Navarro put together a succinct mission statement of her vision as the Chair of the Accessibility Enhancement Committee. He suggested speaking with Commission Chair Johnson and developing this mission statement with Executive Director Vitale's assistance. It could then be sent out to the Committee Members for feedback and be ready to adopt at the next meeting.

Chair Navarro stated the letter, which introduces the Committee and asks very specific questions, is only one part of the solution. The other part is looking at the private sector in terms of ADA compliance. Regarding the private sector, Commissioner Burks suggested the Committee could do the same thing as with those entities that are associations to the business sector. Those associations would be associations such as the American Institute of Architecture California Council (AIACC) and the trades associations. Chair Navarro added the disability-specific nonprofits to this list.

Commissioner Burks suggested the Committee first deal with the actions of the business sector and the governmental side. He stated the business sector has complained that disability compliance requirements are a burden.

Executive Director Vitale recommended narrowing the field of inquiry down by using the business licenses, as opposed to building permits, which list the year the business license was first issued. This would tell the Committee which businesses in California were licensed prior to 1981, and which were licensed prior to 1992. Those numbers show what

**CALIFORNIA COMMISSION ON DISABILITY ACCESS
ACCESSIBILITY ENHANCEMENT COMMITTEE
DECEMBER 20, 2011 MEETING MINUTES**

the percentage of noncompliance could possibly be under a worst-case scenario, and indicate how much work needs to be done. This information then can be plotted out on a statewide color map or pie chart, to quickly illustrate the seriousness of the issue for legislatures reviewing the reports.

b. Recruitment of Committee Members

- (1) Who do we wish to recruit for our committee?**
- (2) Review of Resumes received from potential candidates.**
- (3) Selection of a Vice Chairperson.**

Executive Director Vitale informed the Committee that Commission Chair Johnson would prefer for a quorum to be as small as possible.

Commissioner Burks added that Commission Chair Johnson recommends that, before any subcommittee is formed, to have the Committee protocol, which should be completed next month, in place. He suggested not less than five and not more than nine members. He also suggested that Chair Navarro talk to Commission Chair Johnson.

Commissioner Burks continued by expressing his concern about the stakeholder base and about ensuring the Committee has a diverse representation from the disability community and the business community per the statutory requirements.

Executive Director Vitale recommended Regina Dick-Endrizzi, the Executive Director of the Office of Small Business of the City and County of San Francisco. Ms. Dick-Endrizzi attended the earlier CASp & Education Committee meeting. She represents small businesses in areas that have been having issues that are taking action on accessibility. She has indicated a willingness to attend further meetings. Executive Director Vitale feels she would be a good candidate for Accessibility Enhancement Committee membership.

c. Work plan for 2012

- (1) What needs to be accomplished in 2012?**
- (2) Which CCDA Committees should we be working closely with?**
- (3) How does the Accessibility Enhancement Committee contribute to their work?**

Chair Navarro stated the Committee has discussed some parts of the work plan and necessary action for 2012. Commissioner Burks recommended that Chair Navarro speak with Commission Chair Johnson about what needs to be accomplished in the work plan. He felt that the Committee has made a good, basic start in identifying what might ultimately lead into subcommittee structure, which is what Executive Director Vitale identified about bringing the subcommittee work back before the full Committee to be able to bring to the full Commission.

5. FUTURE ACCESS ENHANCEMENT COMMITTEE MEETINGS

Executive Director Vitale asked the Committee to determine their meeting dates as quickly as possible. He stated the Accessibility Enhancement Committee and the CASp & Education Committee could continue to meet on the same day. He mentioned that, if it

**CALIFORNIA COMMISSION ON DISABILITY ACCESS
ACCESSIBILITY ENHANCEMENT COMMITTEE
DECEMBER 20, 2011 MEETING MINUTES**

is determined that the Committees require additional time above the current two-hour schedule, it is possible to begin the first meeting an hour earlier to give each Committee three hours.

6. FUTURE AGENDA ITEMS

No future agenda items were discussed.

7. ADJOURN

Chair Navarro adjourned the meeting at approximately 2:25 p.m.